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Title/Style of Cause:	Miriam Huaches de Garcia v. Peru
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Decided by:	Chairman: Patrick L. Robinson; First Vice Chairman: Marco Tulio Bruni Celli; Second Vice Chairman: Oscar Lujan Fappiano; Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares Lanza; Michael Reisman
Dated:	22 February 1991
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BACKGROUND:

1. On February 20, 1989, the Inter-American Commission on Human Rights received the following complaint:

Forced disappearance of Miriam Huaches de Garcia, President of the Mothers Club and Secretary of Minutes and Archives of the United Peasants Committee of the village of La Union, District of Campanilla, Province of Mariscal Caceres, Department of San Martin; arrested at that place on December 14, 1988, by an army patrol under the command of Lieutenant Luis del Busto Herrera, called "El Zorro" (the fox), while a house search was being conducted.

This seems to be an act of revenge, because it was preceded by an argument on December 8, 1988, between the victim and other members of the Mothers Club on one side and town prostitutes on the other. The latter, after drinking liquor in a bar, made a scene in the town square. The Mothers Club protested and the prostitutes responded with insults and profanities.

On the day of the arrest, the army soldiers first entered the local brothel and were there for 45 minutes. They then went to the home of the missing person together with the aforementioned prostitutes.

The missing woman is six-months pregnant; nevertheless, she was beaten at the time of her arrest, and therefore there is fear for her life.

This institution is also concerned over the repeated claims made by her relatives and by labor organizations. The Ministry of Defense has issued official letter 082 K1/SZSNNO-2 of December 27, 1988, addressed to the president of FASMA, which states that the Ministry will investigate the facts and that, if no-one is found guilty, it will file a criminal charge through the appropriate government attorney's office for "damaging the image of the army." It thereby assumes the role of judge and party to the reported acts and a threat to people who report human rights violations. Such investigations are supposed to be handled by the Public Ministry in order to ensure their impartiality.

2. Through a note of April 24, 1989, the Commission sent the relevant parts of the claim to the

Government of the Republic of Peru and asked that Government to provide the information it deemed appropriate. An answer was not received within the statutory time limit.

3. This request for information was repeated in a note addressed to that Government on September 8, 1989, which mentions the possibility that Article 42 of the Commission's Regulations would be applied. Still no reply was received.

CONSIDERING:

1. That in resolution AG/RES. 666 (XIII-O/83) the General Assembly declared that "the practice of forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity."

2. That the period established in Article 34, paragraph 5, of the Regulations of the Commission has elapsed without the Government of Peru having responded to the request for information made by the IACHR in the notes referred to in the background section of this report, so that it may be presumed that there are not any remedies under domestic jurisdiction to be exhausted (Article 46 of the American Convention), in light of the adversarial procedure established in that Convention.

3. That Article 42 of the Regulations of the Commission reads:

Article 42

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference if, during the maximum period set by the Commission under the provisions of Article 34, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

4. That Article 1, paragraph 1, of the American Convention on Human Rights reads:

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

5. That the Republic of Peru is a State Party to the American Convention on Human Rights and has ratified the binding jurisdiction of the Inter-American Court of Human Rights.

Therefore, in view of the related background and the considerations as well as of the fact that the Commission does not have any other evidence that would lead it to a different conclusion, based on Article 42 of its Regulations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To presume to be true the claims presented in the February 20, 1989, correspondence pertaining to the arbitrary arrest by agents of the Peruvian state and subsequent disappearance of Miriam Huaches de Garcia in the settlement of La Union, District of Campanilla, Province of Mariscal Caceres, Department of San Martin, on December 14, 1988.

2. To declare that that act constitutes a serious violation by the Peruvian state of the rights to life,

humane treatment, personal liberty and a fair trial (Articles 4, 5, 7, and 8, respectively, of the American Convention on Human Rights).

3. To recommend to the Government of Peru that it conduct the most exhaustive investigation possible of the acts denounced in order to identify those who are directly or indirectly responsible so that they may receive the corresponding legal penalties and that it inform the Commission of its decision and the measures taken, within a maximum period of 60 days.

4. To recommend to the Government of Peru that it adopt the measures established under national law to indemnify the families of the victim.

5. To transmit this report to the Government of the Republic of Peru and to the petitioners.

6. If, within the period set in operative paragraph 3 of this report, the Government of Peru has not presented observations, the Commission shall include this report in its Annual Report to the General Assembly, in accordance with Article 48 of the Regulations of the Commission.